Supreme Court, U. S.
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MAY 31 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

September Term, 1980

NO. 79-1764

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TEXAS DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

V.

JOYCE ANN BURDINE,

Respondent,

* * * * *

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

* * * * *

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Petitioner, Texas Department of Community Affairs, respectfully prays that the Court consider this supplement to Petitioner's Petition for Writ of Certiorari.

It has come to the attention of counsel for Petitioner that the United States Court of Appeals for the First Circuit has recently interpreted this Court's opinions in *Furnco Construction Corporation v. Waters*, 438 U.S. 567 (1978) and *Board of Trustees v. Sweeney*, 439 U.S. 24 (1978), in a way which conflicts with the holding of the United States Court of Appeals for the Fifth Circuit in the case at bar. In *Loeb v. Textron, Inc.*, 600 F.2d 1003 (1st Cir. 1979), the Court stated:

> We think it now clear that *McDonnell Douglas* leaves the burden of persuasion at all times with the plaintiff, and that the employer's burden to "articulate" a legitimate, nondiscriminatory reason is not a burden to persuade the trier that he was in fact motivated by that reason and not by a discriminatory one. Rather it is a burden of production---i.e., a burden to articulate or state a valid reason, following which the complainant must show that the reason so articulated or stated is a mere pretext or "cover-up" for what was in truth a discriminatory purpose.

This interpretation of *Sweeney* and *Furnco* by the First Circuit clearly conflicts with the holding of the Fifth Circuit in this action that the Defendant in a Title VII case must prove by a preponderance of the evidence that it relied on a non-discriminatory reason in making a challenged employment decision.

This Honorable Court should grant the Petition for Writ of Certiorari, for the reasons stated in the original Petition and for the additional reason that it would eliminate this conflict between the Circuits.

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lonny F. Zwiener, Assistant Attorney General of Texas, do hereby certify that three true and correct copies of the foregoing Supplement to Petition for Writ of Certiorari has been served upon attorney for Respondent by placing same in the United States Mail, certified, return receipt requested, addressed to Mr. Hubert L. Gill, P.O. Box 777, Austin, Texas 78767 on this the _____ day of May, 1980.

_____
LONNY F. ZWIENER